IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.564 of 1995
Date of decision:30.10.2006

The Commissioner of Income Tax, Amritsar

....Petitioner

versus

M/s. Deva Singh Sham Singh, Amritsar

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar arising out of its order dated 17.12.1992 in ITA No.767(ASR/1988, in respect of assessment year 1983-84:-

> "Whether the Tribunal has been correct in law in holding that the assessee was entitled to 20% depreciation in respect of Generator purchased for Rs.2,28,419/- by holding that the Electric Generator falls under Item IIIC(4) of Part I of Appendix I of the Income Tax Rules, 1962?"

The assessee claimed depreciation at the rate of 30% on Item III (C) (4) of Appendix I of the Income Tax Rules, 1962 (for short, 'the Rules'). The Assessing Officer allowed depreciation at the rate of 10%. The CIT(A) rejected the plea of the assessee holding that 30% depreciation under Item No.10A was allowed only on renewable energy devices not using normal source of energy. Item III(C) allowing 20% depreciation was - "electrical machinery-Batteries, X-Ray and electro-therapeutic apparatus

and accessories thereto (N.E.S.A.).” This was also held not applicable. It was held that depreciation was allowable at the rate of 15%. The Tribunal held that claim of depreciation on generator was fully covered under Item III(C)(4) of Appendix I of the Rules.

In **CIT v. Saraswati Industrial Syndicate Limited,** (2002) 257 ITR 779, this court held that generator was integral part of plant and machinery. This position is not disputed by learned counsel appearing for the revenue.

In view of the above, the view taken by the Tribunal that the generator was covered by Item III(C)(4) of Appendix I of the Rules, is liable to be upheld.

Accordingly, the question referred is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 30, 2006
'gs'

(Rajesh Bindal)
Judge